

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeene G. Kelly.

Public Utility District No. 1 of Chelan
County, Washington

Docket Nos. OA97-20-000
OA97-20-001

Public Utility District No. 2 of Grant
County, Washington

Public Utility District No. 1 of Douglas
County, Washington

Avista Corporation (formerly, Washington
Water Power Company)

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued October 13, 2005)

1. On October 29, 1996, the Public Utility District No. 1 of Chelan County, Washington, the Public Utility District No. 2 of Grant County, Washington, the Public Utility District No. 1 of Douglas County, Washington, and the Avista Corporation (formerly, Washington Water Power Company) (collectively, Petitioners) filed a petition for declaratory order determining that the agreement for the hourly coordination of projects on the Mid-Columbia River (HCAM) does not constitute a coordination agreement subject to the requirements of Order No. 888¹ or, in the alternative, requesting

¹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs., Regulations Preambles, January 1991-June 1996 ¶ 31,036 at 31,654, 31,729-30 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs., Regulations Preambles, July 1996-December 2001 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2002), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

an order granting waiver of all the requirements imposed by Order No. 888. As discussed below, we grant the petition, based on our finding that the HCAM² is not subject to the requirements of Order No. 888.

Background

2. Petitioners state that the HCAM does not constitute a coordination agreement as defined by the Commission in Order No. 888.³ Petitioners state that the HCAM provides for the continuous hydroelectric coordination of seven hydroelectric projects located sequentially on the mainstream of the Columbia River. The HCAM is an agreement among federal agencies, including the Bonneville Power Administration, Bureau of Reclamation, and the U.S. Army Corps of Engineers, in addition to non-federal owners and participants. The seven hydroelectric projects include: Grand Coulee (United States Department of Interior, Bureau of Reclamation); Chief Joseph (U.S. Army Corps of Engineers); Wells (Public Utility District No. 1 of Douglas County); Rocky Reach (Public Utility District No. 1 of Chelan County); Rock Island (Public Utility District No. 1 of Chelan County); Wanapum (Public Utility District No. 2 of Grant County); and Priest Rapids (Public Utility District No. 2 of Grant County) (collectively, Mid-Columbia Projects).

3. According to Petitioners, five purchasers of output from the Mid-Columbia Projects are participants in the HCAM and are subject to the Commission's jurisdiction. These participants include Colockum Transmission Company, Inc., PacifiCorp, Portland General Electric Company, Puget Sound Power & Light Company and the Washington

² The HCAM expired by its own terms on June 30, 1997. On September 2, 1997, in Docket No. ER97-4474-000, the jurisdictional parties to the HCAM filed a revised and updated form of agreement. The Commission accepted the revised HCAM for filing on November 20, 1997, subject to the outcome of Docket No. OA97-20-000. *See Washington Water Power Co.*, Docket No. ER97-4474-000 (November 20, 1997) (unpublished letter order).

³ In Order No. 888, the Commission defined coordination agreements as "all power sales agreements, except requirements service agreements." Order No. 888 at ¶ 31,666 n.178. In addition, for purposes of implementing the non-discriminatory, open access requirements of Order No. 888, the Commission divided bilateral coordination agreements into two general categories: (1) economy energy coordination agreements are contracts and service schedules thereunder that provide for trading of electric energy on an "if, as, and when available" basis, but do not require either the seller or buyer to engage in a particular transaction; and (2) non-economy energy coordination agreements are any non-requirements service agreements, except economy energy coordination agreements. *Id.*

Water Power Company. Petitioners also explain that the other three purchasers and participants in the HCAM are municipalities, including the City of Seattle, Washington, the City of Tacoma, Washington, and the City of Eugene, Washington.

4. Pursuant to its terms, the purpose of the HCAM is to: (1) obtain increased amounts of electrical power and energy from the total system of projects; (2) enhance the non-power uses of the river by reducing the extent and rate of fluctuations of river levels; and (3) provide flexibility and ease of scheduling generation for projects by a method of centralized coordinated scheduling. Petitioners state that the HCAM is not a power sales agreement governing the ultimate disposition of power. Petitioners also state that there is no economic dispatch of power under the HCAM. Petitioners explain that, under the HCAM, the entire hydroelectric capability of the seven generating stations is coordinated for power and non-power purposes.

5. Further, petitioners state that the operations of the seven projects are coordinated on a continual basis with generation dispatch adjustments occurring every four seconds. Under the HCAM, the Public Utility District No. 2 of Grant County (Grant County) is designated as the control center for the total system of projects. Petitioners state that Grant County performs the scheduling and coordination function. They also state that due to the dynamic nature of flow coordination under the HCAM, transmission is not scheduled in advance for energy that is deemed delivered to or received by the Mid-Columbia Projects. Petitioners state that energy is effectively transferred between generators and does not reach any load. They further state that there is no energy charge and no transmission fee for these inter-project energy exchanges.

6. With regard to open access and principles of comparability, Petitioners state that the parties to the HCAM do not incur any marketing advantages in the wholesale power market and that the HCAM does not constrain the parties' transmission systems. Petitioners state that there are no transmission constraints because the transmission facilities of the seven hydroelectric projects are each sized to accommodate hydroelectric peak generation from seasonal high flows. Petitioners further state that energy is not moved for marketing purposes within the coordinated system and therefore, the parties to the HCAM are not provided any undue preference over power marketers through use of the transmission system.

Notice of Filing

7. Notice of Petitioners' October 30, 1996 filing was published in the *Federal Register*, 61 Fed. Reg. 58,404 (1996), with comments, interventions, and protests due on or before November 21, 1996. Puget Sound Power & Light Company and Portland General Electric Company filed motions to intervene.

8. On February 29, 2000, the Commission issued a basket order stating that, due to the passage of time since Petitioners filed in response to the requirements of Order Nos. 888 and 888-A, it believed that the protestors' concerns may have become moot.⁴ Thus, the Commission directed certain public utilities, including Petitioners, to consult with the intervenors and protestors in their respective cases concerning any continuing disputes, and to file a report with the Commission regarding those consultations. On May 1, 2000, Petitioners complied with that order stating that they continued to request that the Commission grant their petition for declaratory order.

9. Notice of Petitioners' May 1, 2000 compliance filing was published in the *Federal Register*, 65 Fed. Reg. 31,160 (2000), with comments, interventions, and protests due on or before June 8, 2000. None was filed.

Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

Discussion

11. In Order No. 888, the Commission required that all bilateral economy energy coordination contracts executed on or before July 9, 1996 be modified to require unbundling of any economy energy transaction occurring after December 31, 1996.⁵ Order No. 888 did not impose any such requirements on non-economy energy coordination agreements.

12. We find that the HCAM is not an economy energy coordination agreement as defined in Order No. 888. The HCAM does not provide for the trading of energy on an "as available" basis at the discretion of the buyer and seller. Instead, operations are coordinated under the direction of Grant County. Therefore, we grant Petitioners petition for declaratory order and find that the HCAM is not subject to the unbundling requirements of Order No. 888.

⁴ *Allegheny Power Services Company*, 90 FERC ¶ 61,224 (2000) (February 29, 2000 Order).

⁵ Order No. 888 at ¶ 31,729-30.

The Commission orders:

Petitioners' petition for declaratory order is hereby granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.